

## **REMARKS**

### **I. Status of the Application**

Claims 2, 3, 5-8, 38, 39, 41-44, 74, 75, 80, 82-87, 92, and 94-144 are pending in the application, in which claims 2, 38, 116 and 133 are the independent claims.

Independent claims 2 and 103 have been amended. Claims 141-144 have been added.

Claims 125-126 and 131-132 have been cancelled. Claims 4, 9-37, 40, 45-73, 76-79, 81, 88-91, and 93 were previously cancelled.

Entry of the amendments is respectfully requested. Applicants have amended the claims to correct errors and/or to recite particular embodiments that Applicants, in their business judgment, have determined to be commercially desirable at this time. The claim amendments have not been submitted for any reasons relating to patentability.

In a Final Office Action dated November 27, 2009 ("Office Action"), the Examiner rejected all of the pending claims. Applicants respectfully contend that the rejection of these claims on all grounds presented by the Examiner contain clear legal and factual deficiencies.

### **II. Rejections Under 35 U.S.C. § 103(a)**

Claims 2, 3, 5-8, 38, 39, 41-44, 74, 75, 80, 82-87, 92, and 94-140 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of U.S. Patent No. 6,993,511 ("Himmelstein") in view of U.S. Patent No. 6,604,107 ("Wang") and further in view of U.S. Patent No. 6,622,129 ("Whitworth"). The Examiner has not established a *prima facie* case of obviousness for at the least the reasons discussed below.

#### **1. Independent claims 2, 38, and 116**

As amended, independent claims 2, 38, and 116 recite or incorporate:

generating . . . a futures contract for the vehicle . . . in which the futures contract comprises delivery conditions governing the delivery of the vehicle on the designated future date . . .;

. . .  
outputting to a display device information concerning the delivery conditions of the selected futures contract;

after outputting information concerning the delivery conditions, generating an agreement to exchange ownership of the vehicle at the designated future date in accordance with the selected futures contract, in which the agreement comprises the delivery conditions; and

delivering the vehicle, in accordance with . . . the delivery conditions, on the future date.

The cited portions of Himmelstein, Wang, and Whitworth do not disclose or suggest this recitation. For example, the cited portions of Himmelstein, Wang, and Whitworth do not disclose or suggest delivering a vehicle in accordance to delivery conditions output to a display screen. Because the cited portions of these references do not disclose all the recitations of at least one claim, the instant rejection should be withdrawn.

## **2. Independent claim 133**

The Examiner's failure to adequately address all of the limitations in claim 133 resulted in clear error. The following limitation of claim 133 is not taught by the cited portions of the cited references: ***“receiving the vehicle, in accordance with the agreement, on the future date.”***

The Examiner is completely silent with regards to this limitation. There is no discussion in the Final Action of November 27, 2009 (“Final Action”) , whatsoever, of ***“receiving the vehicle, in accordance with the agreement, on the future date.”*** Thus, the Examiner's failure to address all of the limitations of claim 133 resulted in clear error.

[Applicants note that claim 133 includes recitations different from those of claim 1. Thus, much of the Examiner's discussion of claim 1 is not relevant to the features of claim 133.]

**3. The use of circular reasoning to support a motivation to modify Himmelstein and Whitworth with Wang under 35 U.S.C. § 103(a) was in clear error for rejecting claims 2, 38, 105, 106, 114, 115, 116, 131, 132, 133 and 140.**

The motivation proffered by the Examiner to modify Himmelstein and Whitworth with Wang has no basis in the evidence of record, and thus was in clear error. In rejecting claims 2, 38, 105, 106, 114, 115, 116, 131, 132, 133 and 140, the Examiner asserts that,

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Himmelstein and Whitworth combination to include at least a descriptive parameter of a vehicle as taught by Wang *for the obvious reason of classifying the vehicles according to type, model, year and color.*

Final Action, p. 4.

In other words, the Examiner asserts that it would have been obvious to include the feature of a descriptive parameter of a vehicle for the reason of classifying a vehicle according to its descriptive parameters. This is circular reasoning, not evidence.

The Examiner's assertions are merely conclusory and unsupported by any factual findings, let alone factual findings supported by substantial evidence; and without such factual findings, there is no *prima facie* case of obviousness.

Thus, the Examiner's failure to meet his *prima facie* burden of obviousness for rejecting claims 2, 38, 105, 106, 114, 115, 116, 131, 132, 133 and 140 under 35 U.S.C. § 103(a) was in error.

**General Comments on Dependent Claims**

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. However, Applicants do not necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any of the dependent

claims is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

**Authorization for Email Communication**

Recognizing that Internet communications are not secure, Applicant hereby authorizes the USPTO to communicate with any authorized representative concerning any subject matter of this application by electronic mail. Applicant understands that a copy of these and any other written communications will be made of record in the application.

### **CONCLUSION**

In general, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in this paper or documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to Deposit Account No. 50-3938.

Date: December 28, 2010

Respectfully submitted,

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